

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-MA-0074-2005

(Arising from CS 113-1999)

AIDA RUKUMBAGAZAPLAINTIFF/APPLICANT

VS

KEITH RUKUMBAGAZA)

KANZIIRA)RESPONDENTS

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

Aida Rukumbagaza brings this application for a temporary injunction under Order 37 rule I (a) and 9 of the Civil Procedure Rules. She also invokes Section 101 of the Civil Procedure Act, which provision I hasten to observe does not exist under the Act. Be that as it may, the application arises out of Civil Suit No. 113 which is still pending before this court. The first respondent is Keith Rukumbagaza, the applicant's husband. The second respondent is one Kanziira. Despite service of the application on both respondents, no response has been drawn from them. Both have not seen it fit to attend court at the hearing of this application. Hearing proceeded ex parte.

The application was instituted by Chamber Summons and is supported by the applicant's affidavit. It seeks for a temporary injunction to issue against the respondents their agents or any person claiming authority under them from damaging, alienating, settling transferring, occupying or otherwise carrying out any transaction in respect to the land comprised in LRV 1862 Folio 17 land at Kashari Kacerere, Rwanyamahembe, Mbarara District until the hearing and disposal of Civil Suit No. 113 of 1999. In addition costs of the application are sought.

I have heard the submissions of Mr. Byarugaba counsel for the applicant in connection with this application. I have also studied the application together with the accompanying affidavit. I must

note that the application has not been contested by the respondents and all that remains is to consider its merits. According to paragraph 15 of the affidavit in support the first respondent is about to transfer the suit land to the second respondent and that preparations are being made to dig up the land and make bricks. Paragraph 16 of the affidavit shows that the suit land is used for grazing cattle and the growing of food crops. It is stated in the same paragraph that the intended developments will cause waste to the land by rendering it unsuitable for her habitation and that of her family.

The main objective of granting a temporary injunction is to maintain the status quo and in determining whether or not to maintain the status quo certain circumstances have to be taken into account. I take into account the fact that there is a pending suit before this court. Secondly I have to consider the inconvenience or irreparable injury likely to result if there is alienation of the suit land and the consequent making of bricks. What would result will be incurable and irreparable injury to the applicant when the earth on the suit land is excavated leaving ugly big pits on the land. In case the applicant is successful in the suit she is likely to be repulsed by the new look of the suit land and she would also have missed the soil extracted there from. In the event of such excavation I hold irreparable injury would result. Needless to say irreparable injury is substantial injury which cannot be adequately remedied or atoned for by damages. See *Doreen Kalema vs National Housing and Construction Corporation* [1987] HCB 73. It is with a view to preserving the status quo of the suit land that the order applied for should be granted.

This application succeeds with costs in the cause.

P. K. Mugamba

Judge

24th June 2005

24 June 2005

Applicant in court

Ms Tushemereirwe court clerk

Court:

Ruling read in court.

P. K. Mugamba

Judge